

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 617 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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BAJIRAO ADHAR KOLI

Versus

STATE OF GUJARAT

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Appearance:

MR KK SHAH for Petitioner

MR S.R. DIVETIA, ASST. PUBLIC PROSECUTOR for  
Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE  
Date of decision: 28/02/97

ORAL JUDGEMENT

(Per Pandya, J.)

The accused-appellant was facing charge of murder in Sessions Case No.48 of 1987. He was said to have killed his wife Kalawatiben aged about 20 years. He belongs to State of Maharashtra in village Chudana and has come to reside with his father-in-law in Udhna area of city of Surat so that he can get some employment. He could manage to get an employment but it being in a colour factory, it did not suit to him. He therefore wanted to go back to his native place. He was however persuaded, as stated by witnesses nos.1, 2 and 3, to remain in Surat and he was further assured that his relative i.e. in-laws will try to find out a job for him elsewhere. On the night of 26.3.1986 somewhere between 12.30 AM to 7.00 AM he is said to have strangulated his wife with a muffler wound around her neck.

2 Death is due to asphyxia on account of strangulation and a tall tail ligature mark is noted as per post mortem note exh.16. PW No.5, Dr Harindra Bhulabhai of Civil Hospital, Surat, no doubt, has admitted that possibility of suicide cannot be ruled out but there are no circumstances indicated anywhere that she would have committed suicide. Apart from that, the death certificate of the doctor, in our view, is not matter of great help because, looking to the manner of strangulation, to achieve the suicidal end by a woman of 20 years is almost an impossibility. The muffler was wound around the neck and therefore ligature mark is found all around the neck. Corresponding internal injury is occurred to neck muscles mostly which are torn and congested. There was usual egmosis around the ligature mark. There was fracture of laryngeal cartilage and there was engorgement of keratin arteries. Hyoid bone being intact death by hanging is ruled out. To expect an young girl of 20 years to wound a muffler like article around her neck and to proceed to commit suicide obviously by pulling the loose ends of the muffler in opposite direction with her hands and thereby put an end to her life could be theoretical possibility. But, this is not a case of suicide and it cannot be in this case. The doctor has also said in the course of his deposition at page 33 of the paper book that the possibility of suicide is very very remote. This he has answered after Modi's Medical Jurisprudence was shown to him about the suicidal strangulation. Even the learned author has noted that suicidal strangulation is not very common.

3 The accused was found on the same day by about 10 AM near Navin Fluorine compound in Udhna area itself. Soon he was taken to the hospital where, according to the case of the prosecution, he has felt discomfort and vomited and vomit was sent for chemical analysis also. The faint attempt made by him while answering questions under section 313 to make out a case of having gone to his native place has obviously failed. There are witnesses deposing that both the husband and wife were sleeping in the room in which the dead body was found. The conclusion arrived at by the learned Sessions Judge in the said case therefore cannot be said in any way to be a wrong conclusion. The learned Sessions Judge has elaborately discussed the material placed before him and after taking into consideration all the circumstances when he has recorded the finding of guilt against the accused, there is no reason for us to interfere with the same. The appeal is therefore rejected.

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